

Hasbrouck, Ben

From: Hasbrouck, Ben
Sent: Wednesday, March 31, 2021 5:00 PM
To: Rachel Lederman; charlesmeeker@parkerpoe.com
Cc: Zuger, Aubrey; Raum, Michael; Andrea Nowak (anowak@fredlaw.com)
Subject: RE: Our subpoena to TigerSwan LLC

Rachel,

Thanks for your patience. You may not be aware that my firm was retained by TigerSwan only in the last several months, and there are a number of issues related to your subpoena we needed to get a handle on.

At this point, we need to object to the deposition going forward, for the reasons set out below. With that said, we are hoping to work through the issues with you and with Energy Transfer LP/Dakota Access LLC ("Energy Transfer").

Here are the concerns we have, which you may accept as our objections.

Confidentiality. TigerSwan is subject to a confidentiality agreement with Energy Transfer, which is part of Professional Services Agreement between Dakota Access LLC and TigerSwan LLC, dated September 5, 2016. The confidentiality agreement is broad and provides that "all information . . . related to the Company . . . is proprietary and confidential to the Company." The agreement also requires TigerSwan to return confidential information. TigerSwan is being sued by Energy Transfer for the alleged breach of that confidentiality provision. That case is Energy Transfer LP and Dakota Access LLC v. North Dakota Private Investigative and Security Board and TigerSwan LLC, Case No. 08-2020-CV-02788, which is pending in Burleigh County, North Dakota.

Any testimony TigerSwan could give related to it's work for Energy Transfer, which is the subject of your subpoena, could result in allegations that TigerSwan has breached its confidentiality obligations.

Scope of Subpoena. The topics designated for testimony in your subpoena are extremely broad and also quite vague and hard to understand. They also seem to be directed toward the allegations made against TigerSwan in the separate action of Thunderhawk, et al. v. County of Morton, et al., which is pending in the District of North Dakota as Case No. 1:18-cv-00212 and to which TigerSwan is a party. I have reviewed your Amended Complaint, and while I noted sporadic references to TigerSwan, I fail to see how those references relate to the claims you're asserting, or how the topics on which you seek a deposition are relevant to the case.

In addition, depositions in Thunderhawk have been stayed by order of the Court, and I'm concerned that, whether by design or effect, your subpoena – particularly through its breadth and the topics on which you are requesting examination – circumvents that order.

Burden and Time of Response. The topics, as currently framed, would be extremely burdensome to prepare for, particularly on a short timeframe. This issue is further complicated by the fact that we believe there would be little first-hand, responsive information among current TigerSwan employees, and TigerSwan has returned to Energy Transfer, as was its contractual obligation, virtually all of the documents that might allow itself to prepare a designated representative to testify.

To be clear, we are objecting to the subpoena – and the topics for examination in it – under Federal Rule of Civil Procedure 45(d) as failing to allow a reasonable time to respond, requiring the disclosure of privileged or other protected material, requiring the disclosure of trade secret or other confidential information, and as unduly

burdensome. We would like to try to resolve these issues without involving the Court, though if required we will file a motion to quash or modify the subpoena.

To try to work through these issues, I propose the following:

First, please attempt to narrow and better define the topics on which you are requesting testimony.

Second, please explain how those topics are relevant to the Dundon case.

Third, please allow me some additional time to try to work through the confidentiality issues with counsel for Energy Transfer. As I'm sure you can understand, particularly given the fact that Energy Transfer already has sued TigerSwan for alleged breach of confidentiality, we cannot permit TigerSwan to testify concerning its work for Energy Transfer without either TigerSwan's consent or a Court order compelling the testimony. Otherwise we would risk exposing our client to additional allegations of breach of confidentiality.

[My sense is a narrowing of the topics could potentially help us work through the confidentiality concerns.]

I'm happy to discuss by telephone if you think it may be helpful.

Finally, if for any reason you will insist on setting a date for compliance with the subpoena (which hasn't yet happened), please promptly advise and we will file a motion to quash or modify.

Regards,
Ben

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From: Rachel Lederman <rlederman@beachledermanlaw.com>

Sent: Tuesday, March 30, 2021 5:48 PM

To: Hasbrouck, Ben <BHasbrouck@fredlaw.com>; charlesmeeker@parkerpoe.com

Cc: Zuger, Aubrey <AZuger@fredlaw.com>; Raum, Michael <MRaum@fredlaw.com>

Subject: Re: Our subpoena to TigerSwan LLC

[EXTERNAL E-MAIL]

I'm checking back to firm up a date for the TigerSwan deposition. I had agreed to the week of April 12 and that is filling up quickly.

Rachel Lederman, Attorney at Law (she/her/they)
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On Wed, Mar 17, 2021 at 10:07 AM Hasbrouck, Ben <BHasbrouck@fredlaw.com> wrote:

Thanks for the heads up. Would you mind forwarding the subpoena? We haven't seen it yet.

Ben

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From: Rachel Lederman <rlederman@beachledermanlaw.com>
Sent: Wednesday, March 17, 2021 12:03 PM
To: Zuger, Aubrey <AZuger@fredlaw.com>; Raum, Michael <MRaum@fredlaw.com>; Hasbrouck, Ben <BHasbrouck@fredlaw.com>
Subject: Our subpoena to TigerSwan LLC

[EXTERNAL E-MAIL]

Hello, I understand that you represent TigerSwan LLC. We recently served your client with a subpoena for a Rule 30(b)(6) deposition in the Dundon et al. v. Kirchmeier et al., a class action civil rights lawsuit against local law enforcement regarding one of the events at Standing Rock, North Dakota. The subpoena is for March 25 due to a court imposed deadline to complete depositions, but I anticipate that deadline will be extended and am open to discussing the date.

Rachel Lederman, Attorney at Law (she/her/they)
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